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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,168	08/18/2003	Glen S. Axelrod	TFH028U	3595

32047 7590 09/21/2007
GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC
55 SOUTH COMMERICAL STREET
MANCHESTER, NH 03101

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

MAIL DATE	DELIVERY MODE
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09/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/643,168

Applicant(s)

AXELROD, GLEN S.

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/28/07 has been entered.

Response to Arguments

2. Applicant's arguments filed 06/28/07 have been fully considered but they are not persuasive. The Applicant has argued in light of the amendment to the claims that the Handelsman (US 7,017,523) reference does not disclose the end piece overlies and protects the edge section of the body portion. As the Examiner construed this limitation regarding the end piece protecting the edge section of the body portion from contact with the animal (as stated in Paragraph 7 of the Final Rejection), the rejection stands. With respect to the newly added limitation that the end piece is further defined to overlie the edge section, it is maintained that the end piece overlies the edge section; Merriam-Webster's Collegiate Dictionary Tenth Edition defines "overlie" as to lie over or upon. As the end piece of the Handelsman reference lies upon the edge piece of the body portion, the reference still anticipates the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-8, 10, 12-15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Handelsman, US 7,017,523.

Handelsman discloses a body portion including an outer layer (701) having a first hardness and a rigid supporting core (i.e. shaft, not shown), the body portion having a first and second end sections with an edge section thereof and an end piece (703) including a raised ridge section (as viewed, for example, in figure 11, adjacent hub 711a) wherein the end piece overlies and protects the edge section of the body portion from contact with the animal during chewing, wherein the end piece configured to engage the body portion includes an opening (reference column 7, lines 21-24).

Regarding claim 2, Handelsman discloses the end piece protects the edge section of the body portion by at least partially overlying the edge section (reference column 7, lines 21-24).

Regarding claim 3, Handelsman discloses the end piece protects the edge section by completely overlying the edge section and wherein the end piece is sealingly engaged to the body portion (reference column 7, lines 21-24).

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Regarding claim 4, Handelsman discloses the edge of the body portion is configured to engage the opening in the end piece and the opening compresses upon the end section (reference column 7, lines 21-24 in which the end cap may be a “press” fit).

Regarding claim 5, it is inherent that in a “press” fit connection as disclosed that the opening in the end piece is less than the diameter of the first and second end sections.

Regarding claim 6, Handelsman discloses the outer layer of the body portion comprises an elastomer (reference column 5, lines 26-29).

Regarding claim 7, Handelsman discloses the outer layer comprises natural rubber (reference column 5, lines 27-28).

Regarding claim 8, Handelsman discloses the first and second end pieces comprise a thermoplastic material (i.e. polyurethane).

Regarding claim 10, Handelsman discloses the body portion comprises a core at least partially covered by the outer layer.

Regarding claim 12, Handelsman discloses at least one of the body portion and the first and second end pieces include a plurality of protrusions

Regarding claim 13, Handelsman discloses the plurality of protrusions comprise conical protrusions (reference for example 303 and 403).

Regarding claim 14, Handelsman discloses the body portion outer layer has a hardness on the Shore A scale (inherent).

Regarding claim 15, Handelsman discloses the end pieces have a hardness on the Shore D scale (inherent).

Regarding claim 17, Handelsman discloses the body portion and the outer layer is made of an elastomer material.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Handelsman, US Patent 7,017,523.

Handelsman discloses the invention substantially as claimed. However, Handelsman does not positively disclose the first and second end pieces or the core are a nylon material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use nylon for the material of the end pieces, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice as the Applicant has not stated the criticality of the specific choice of nylon (reference instant application, page 8, lines 18-19). *In re Leshin*, 125 USPQ 416.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Handelsman as applied to claim 1 above, and further in view of Klaus et al., US Patent 6,676,481 (Klaus).

Handelsman discloses the invention substantially as claimed including the end piece may be connected via fasteners to the body portion. However, Handelsman does not positively disclose the first and second end pieces and body portion include at least one cooperating hole

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for the insertion of a dowel to attach the end pieces to the body portion. Klaus teaches within the analogous art of toys the use of a dowel inserted into two connection portions of a toy for providing a secure attachment of two pieces together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the corresponding hole and dowel to fasten the end pieces to the end portion of the body portion as taught by Klaus with the invention of Handelsman as a known means of fastening so as to provide a secure coupling between the two components.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kaplan (US D453,242).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kimberly S Smith
Primary Examiner
Art Unit 3644

kss